

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-04-IH-0525
	)	
Blackstone Calling Card, Inc.	)	NAL/Acct. No. 200632080091
	)	
Apparent Liability for Forfeiture	)	FRN 0014434062
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 13, 2007**

**Released: July 13, 2007**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), based on information that Blackstone Calling Card, Inc. (“Blackstone”) submitted to the Enforcement Bureau (“Bureau”) in response to a December 19, 2005 Notice of Apparent Liability for Forfeiture (“NAL”), we find that Blackstone is not a regulated telecommunications carrier. As a result, we cancel the \$20,000 forfeiture proposed in the NAL.

**II. BACKGROUND**

2. Blackstone is a Florida-based company that offers various services and products to the public, among them a variety of prepaid calling cards, including cards with the Blackstone label.<sup>1</sup> On March 30, 2004, Bureau staff sent a letter to Blackstone requesting specific information relating to its compliance with Section 64.1195 of the Commission’s rules.<sup>2</sup> Section 64.1195(a) requires that a telecommunications carrier that will provide or already provides interstate telecommunications service file certain registration information with the Universal Service Administrative Company (“USAC”).<sup>3</sup>

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<sup>1</sup> See [www.blackstoneonline.com](http://www.blackstoneonline.com).

<sup>2</sup> See letter from Hugh Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, to Blackstone dated March 30, 2004 (“March 30 Audit Letter”).

<sup>3</sup> See 47 C.F.R. § 64.1195(a). In 1999, to streamline the administration of the programs and to ease the burden on regulatees, the Commission consolidated the information filing requirements for multiple telecommunications regulatory programs into the annual Telecommunications Reporting Worksheet. See *1998 Biennial Regulatory Review*, Report and Order, 14 FCC Rcd 16602 (1999). The next year the Commission revised the Telecommunications Reporting Worksheet slightly to collect the additional information necessary to achieve its goal of establishing a central repository for interstate telecommunications providers by the least provider-burdensome method. *Carrier Selection Order*, 15 FCC Rcd at 16026. Carriers required to register must submit a FCC Form 499-A to USAC. This requirement to register is essential to the fulfillment of the universal service and (continued....)

Blackstone responded to the Bureau's inquiry letter by providing an unsupported statement that "Blackstone Calling Card, Inc. is not a carrier" and thus not required to comply with Section 64.1195.<sup>4</sup> In response to a Bureau Letter of Inquiry ("LOI"), Blackstone failed to provide sufficient information to support this claim.<sup>5</sup>

3. On December 19, 2005, the Bureau issued an NAL against Blackstone finding that Blackstone had apparently violated Commission orders by willfully and repeatedly failing to respond to Bureau directives to provide information and documents. Based on the Bureau's review of the limited information provided by Blackstone and other information available from public sources, the Bureau concluded in the NAL that Blackstone appeared to be a carrier and was apparently liable for a forfeiture. The NAL ordered Blackstone to file complete responses to the Bureau inquiries and, pursuant to section 503(b)(2)(B) of the Communications Act of 1934, as amended, (the "Act"), to pay the \$20,000 proposed forfeiture or file a response within thirty days.<sup>6</sup> After receiving the NAL, Blackstone provided information and documents demonstrating it was not a regulated entity providing telecommunications services at the time of the apparent violation.<sup>7</sup>

### III. DISCUSSION

4. We first conclude that Blackstone was not a regulated entity providing telecommunications services at the time of the apparent violation. During the Bureau's investigation Blackstone failed to provide any supporting documentation for its claim that it was not a telecommunications provider, preventing the Bureau from making a timely determination about Blackstone's status. After reviewing the materials provided, we are now in a position to evaluate fully Blackstone's claim that it was not a regulated entity. Among other information, Blackstone submitted copies of contracts between it and the telecommunications carriers providing the service underlying Blackstone's calling cards. These contracts establish that Blackstone was acting as an agent for the carriers by distributing the prepaid calling cards and, among other terms, acknowledged that the carriers - not Blackstone -- were responsible for the provision of the associated services and the related regulatory obligations. After reviewing the documents and other probative information submitted by Blackstone, we are now able to determine by a preponderance of the evidence that Blackstone was not a regulated telecommunications provider at the time of the apparent violations and thus not obligated to comply with section 64.1195(a) of the Commission's rules.

5. Having determined that Blackstone was not a regulated telecommunications provider at the time of the apparent violations, we find that we were precluded from proceeding with a Notice of Apparent Liability without first issuing a citation in accordance with the requirements in section

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other program missions because it identifies the company as potentially subject to various program requirements and enables the program administrators to oversee the company's compliance with those requirements. Upon submission of a FCC Form 499-A registration, the carrier is issued a filer identification number by USAC, which is then associated with further filings by the company and is used to track the carrier's contributions and invoices.

<sup>4</sup> Electronic mail message from Tania Diblin, Legal Assistant, Blackstone, dated April 16, 2004.

<sup>5</sup> See Letter from Luis Arias, Blackstone, to Carla Conover, Investigations and Hearings Division, Enforcement Bureau, dated December 20, 2004.

<sup>6</sup> See 47 U.S.C. § 503(b)(2)(B); *Blackstone Calling Card, Inc.* Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 19898 (Enf. Bur. 2005).

<sup>7</sup> See Response of Blackstone Calling Card, Inc. dated April 20, 2006 ("Response"), at 2.

503(b)(5) of the Act. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any order, rule, or regulation issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>8</sup> The Commission, however, must first issue a citation in the event a person does not or need not hold a Commission authorization at the time of the apparent violation.<sup>9</sup> The Commission may impose a forfeiture only if the non-regulated company is issued a citation and “subsequently engages in the conduct of the type described in such citation.”<sup>10</sup> Since we were precluded from proceeding with a Notice of Apparent Liability against Blackstone without first issuing a citation in accordance with the requirements in section 503(b)(5), we cancel the NAL. Given the particular facts and circumstances of this case, we exercise our discretion by declining to issue a citation against Blackstone under section 503(b)(5).

#### IV. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED THAT, pursuant to sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 503(b), the Notice of Apparent Liability for Forfeiture issued against Blackstone Calling Card, Inc. on December 19, 2005 is hereby CANCELED.

7. IT IS FURTHER ORDERED THAT a copy of this MEMORANDUM OPINION AND ORDER shall be sent, by certified mail/return receipt requested to Steven A. Augustino Esq., Kelley, Drye & Warren, LLP, Washington Harbour, Suite 400, 3050 K Street, N.W., Washington, D.C. 20007-5108.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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<sup>8</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

<sup>9</sup> 47 U.S.C. § 503(b)(5). After a citation has issued, no additional citation with respect to the conduct of the type detailed in the citation is necessary before notice and penalty proceedings may ensue. *Id.*

<sup>10</sup> *Id.*